

1634 Eye Street, NW  
Suite 1100  
Washington, DC 20006

January 11, 2009

FILED ELECTRONICALLY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street SW, Room TW-A325  
Washington, DC 20554

**RE: *Ex Parte* Presentation in Docket No. 09-51, 09-47, 09-137**

Dear Ms. Dortch:

On January 5, 2010 I met with Blair Levin and Erik Garr of the National Broadband Plan team.

The discussion focused on how the Commission could get more public comment on protecting privacy and the use of personal information in broadband applications. Based on that discussion, I have created a draft Notice of Inquiry (NOI) for the Commission to consider releasing on this issue. This NOI is included below.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office.

Respectfully Submitted,

Ari Schwartz  
Vice President and COO



In the course of compiling the record for the Commission's development of the National Broadband Plan,<sup>1</sup> the Commission has invited comment on implementation of smart grid technologies, health delivery, open government and data portability. The Commission received comments regarding both the importance of the ability to utilize personal information and to protect personal privacy in each of these areas.

Accordingly, the Commission seeks more tailored comment on the use of personal information, identity management services, and privacy protection across broadband applications.

**Meeting Consumer Expectations of Privacy.** The Commission has received comments suggesting that the use of personal information remains central to the success of many of the technologies considered, yet trust in these technologies depends on the ability to meet basic consumer expectations of privacy. The Commission invites further comment on this issue, including:

1. What principles and standards should be considered to help articulate existing consumer expectations of privacy?
2. What can federal agencies do to help ensure that consumer expectations of privacy are met as new technologies platforms are developed?
3. Are there industry best practices or regulatory models that are useful in helping to ensure that can be adapted across technology platforms to ensure that users are protected while allowing for the proper use of personal information?

**Building Privacy by Design.** The Commission would like further comment on ways to promote the development of technologies that protect privacy as they also utilize data.

1. How can information be de-identified, encrypted, pseudonymized or used in the aggregate in ways that are useful to help protect privacy? How can the best of these methods be determined for a particular application?
2. What data minimization principles should be used for different types of data? How can these be built into the technology?
3. How can identity management systems be developed to help provide more direct user controls over personal information across platforms? In particular, how can these systems be designed so that the user is an equal partner to the relying party and the identity provider?
4. Are there existing technical standards that can help to promote privacy by design?

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<sup>1</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

5. What can the federal government do to help promote privacy by design?

**Creation and Use of Transactional Data.** Broadband applications create new sets of data about transactions including potentially the exact time, place and manner that could lead to the discovery of actions of individuals in public or in their homes. The Commission has received comments about concerns surrounding the collection, use and storage of this information and would appreciate further comment on this issue, including:

1. Are certain types of transactional data (location information, health data, etc) more sensitive than others? Should limits be placed on the retention or use of some of this data in ways that are not required today?
2. Are the current rules on government access and use of transactional data held by government agencies sufficient to ensure that this data cannot be abused?

**Third-Party Applications.** Many of the new platforms created for the use of broadband, such as those for energy grid and personal health records, would allow third party applications to be created to provide services for users. This use of third party applications has raised questions about the role of self-regulation and government regulation in promoting a trustworthy marketplace. The Commission would like further thoughts on the following areas:

1. What responsibilities do companies that create new platforms that vet third party applications create for themselves? Would holding the platform provider liable for the actions of third-party application that violate basic privacy and security standards create incentives to ensure that consumer privacy is protected? Would it stifle innovation? Is there a middle ground that can protect consumers and ensure innovation?